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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/550,705

09/27/2005

Scott E. Manzo

2841 (203-2730PCTUS)

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EXAMINER

DANG, PHONG SON H

ART UNIT

PAPER NUMBER

4166

MAIL DATE

DELIVERY MODE

05/28/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/550,705	Applicant(s) MANZO, SCOTT E.	
	Examiner SON DANG	Art Unit 4166	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 10-12 and 16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 13-15 and 17-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09/27/2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>09/27/2005</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. This application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

The species are as follows:

Species I: FIG. 1A-1B & 2A-2F

Species II: FIG. 3A, 3B & 3C

Species III: FIG. 4A-4B

Applicant is required, in reply to this action, to elect a single species to which the claims shall be restricted if no generic claim is finally held to be allowable. The reply must also identify the claims readable on the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

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2. The claims are deemed to correspond to the species listed above in the following manner:

Species I: Claims 1-9, 13-15 & 17-20

Species II: Claims 1-20

Species III: Claims 1-9, 13-18, 20

The following claim(s) are generic: **Claims 1-9, 13-15 and 17.**

The species listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the species lack the same or corresponding special technical features for the following reasons: The Claims within each respective grouping do not contain the same special technical features as the claims of the other respective grouping. In addition, the claims among the species are mutually exclusive as indicated within the disclosure.

3. During a telephone conversation with Ms. Kimberly Perry on April 22, 1008 a provisional election was made with traverse to prosecute the invention of **Species I, claims 1-9, 13-15 and 17-20**. Affirmation of this election must be made by applicant in replying to this Office action. **Claims 10-12 and 16** withdrawn from further consideration by the examiner, 37 CFR 1.142 (b), as being drawn to a non-elected inventions.

OBJECTION

Drawings

4. The drawings are objected to as failing to comply with 37 CFR 1.84(p) (5) because they do not include the following reference sign(s) mentioned in the description: The reference numbers in the specification are not consistent with the drawing. The reference number (60) as shown in the specification (Page 10, line 4) is missing in Fig. 2A and reference numbers (60, 66, Page 10, lines 18-20) are missing in Fig. 2C. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-9, 13-15, 17-20 are rejected under 35 U.S.C. 102(b) as being anticipated by **US Patent No. 5,387,235** to **Chuter**.

Chuter teaches:

In reference to claim 1:

A device for joining a first body vessel to a second body vessel, comprising: a) a cartridge (352, Fig. 43) (Col. 23, lines 42-43) having a distal end and defining a longitudinal axis; b) a radially expandable anchor (301/201, Fig. 43/Fig. 38, Col. 16, lines 59-60) disposed at the distal end of the cartridge for engaging the first body vessel, the expandable anchor having an initial condition and an expanded condition wherein the expandable anchor is radially larger than the expandable anchor (301/ 201) in the initial condition (inherent property because disclosed as self-expanding - Col. 16, lines 59-60); and c) a plurality of sutures (357, 358, Fig. 43, Col. 23, lines 56-58) disposed within the cartridge (352) and being deployable therefrom so as to engage the second body vessel, the sutures (357, 358) being threaded through the expandable anchor (301, Fig. 43).

In reference to claim 13:

Claim 13 is substantially identical to Claim 1 (see Rejection of Claim 1 above), however, the only difference is that Claim 1 recites a radially “expandable anchor” and Claim 13 recites an “anchor”, which is also met by anchor (301, Fig. 43).

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In reference to claims 2 & 14:

The device as claimed in claims 1 & 13 (see Rejection of Claims 1 & 13 above), wherein the expandable anchor (301/ 201, Fig. 43/Fig. 21) comprises a plurality of flexible arms (203, Fig. 21, Col. 16, line 63) biased in an expanded position.

In reference to claims 3 & 15:

The device as claimed in claims 1 & 14 (see Rejection of Claims 1 & 14 above), wherein the cartridge comprises an inner member 354 and an outer member (352, Fig. 43) having a lumen dimensioned to receive the inner member, the sutures (357, 358) being disposed in channels formed in the inner member.

In reference to claims 4 & 17:

The device as claimed in claims 1 & 13 (see Rejection of Claims 1 & 13 above), wherein the anchor (301) has a central passage and the sutures (357, 358, Fig. 43) extend through the expandable anchor (301) and proximally through the central passage (Col. 23, lines 61, 62).

In reference to claim 5:

The device as claimed in claim 3 (see Rejection of Claim 3 above), wherein the expandable anchor (301) is disposed between the inner member (354) and the outer member (217, Fig. 43).

In reference to claims 6 & 18:

The device as claimed in claims 1 & 13 (see Rejection of Claims 1 & 13 above), wherein the sutures (357, 358) have distal ends and needle anchors (205, Fig.

43 or 10, Fig. 2) attached to the distal ends, the needle ends being deployable from the cartridge. (Fig. 2, Col. 9, lines 45-46).

In reference to claims 7 & 19:

The device as claimed in claims 3 & 15 (see Rejection of Claims 3 & 15 above), further comprising a ring (shown in Fig. 43) disposed within the outer member (217) for securing the sutures (357, 358) to the expandable anchor (301).

In reference to claims 8 & 20:

The device as claimed in claims 1 & 13 (see Rejection of Claim 1 above), wherein the expandable anchor (301) comprises a plurality of holes (58, Fig. 8, Col. 10, lines 63-65), each of the holes receiving one of the sutures (357, 358).

In reference to claim 9:

The device as claimed in claim 3 (see Rejection of Claim 3 above), wherein the expandable anchor (301/201) comprises a plurality of arms (203, Fig. 21, Col. 16, line 63) connected by members (204).

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to SON DANG whose telephone number is (571)270-5809. The examiner can normally be reached on Monday-Friday 7:30 AM - 5:00 PM EDT.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ken Bomberg can be reached on 571-272-4922. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

8. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SD

/Kenneth Bomberg/
Supervisory Patent Examiner, Art Unit 4124